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COMPENSATION
FUND

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ANY OTHER BUSINESS

PAYMENT OF CLAIMS ARISING OUT OF THE AEGEAN SEA AND BRAER INCIDENTS

Note by the Director

Introduction

1 Large claims have been or are expected to be submitted in respect of the AEGEAN SEA incident (Spain, 3 December 1992) and the BRAER incident (United Kingdom, 5 January 1993). Certain problems have arisen for the IOPC Fund in ensuring that liquid funds are available to make rapid payments of claims arising out of these incidents. These problems are submitted to the Executive Committee for consideration.

Financial Regulations

2 Under Financial Regulation 5.1(a) and (c), the IOPC Fund shall have a General Fund which shall be used:

- (a) for the satisfaction of claims arising from smaller incidents, ie incidents where the aggregate amount to be paid by the IOPC Fund does not exceed 15 million (gold) francs (1 million SDR);
- (b) for the payment of the first 15 million (gold) francs in respect of larger incidents;
- (c) to meet the administrative costs and expenses of the IOPC Fund;
- (d) to make provisional payments pursuant to Internal Regulation 8.6; and
- (e) to make loans to a Major Claims Fund for the satisfaction of claims to the extent that sufficient money is not available in that Major Claims Fund.

3 The General Fund shall be maintained at such a level as the Assembly may decide from time to time (Financial Regulation 5.1(b)). The General Fund includes a working capital which is used to

pay compensation for claims which were not taken into account for the levy of contributions. The level of the working capital is decided by the Assembly. At its 14th session, the Assembly increased the working capital from £4 million to £6 million and decided to review, at its 15th session, the question of the need for a further increase (document FUND/A.14/23, paragraph 15.2). At its 15th session, the Assembly agreed with the Director's proposal to maintain the working capital at £6 million (document FUND/A.15/28, paragraph 13). In making this proposal, the Director stated that it would be possible to take a loan from the HAVEN Major Claims Fund for the satisfaction of claims arising out of other incidents, to the extent that sufficient money was not available in the General Fund or the Major Claims Fund in question, as the case may be (document FUND/A.15/10, paragraph 16).

4 Separate Major Claims Funds shall be established in respect of each large incident, ie any incident where the aggregate amount of the payments by the IOPC Fund exceeds 15 million (gold) francs. Such a Major Claims Fund shall be used for the payment of claims arising out of the relevant incident, provided that the first 15 million (gold) francs in respect of each incident are to be paid from the General Fund (Financial Regulation 5.2(a) and (d)). The assets of a Major Claims Fund may also be used to make loans to the General Fund or to another Major Claims Fund, to the extent that sufficient money is not available in the relevant funds.

IOPC Fund's Payment Policy

5 Since its establishment, it has been the policy of the IOPC Fund that victims of oil pollution incidents should be compensated as soon as possible. This has been the policy underlying the decisions of the Assembly and the Executive Committee in respect of claim settlements, and it has guided the Director in his negotiations with claimants. The IOPC Fund has also gained a reputation for the rapid payment of claims. In respect of minor and medium-sized incidents, payments are usually made within a short period of time, provided that claims are submitted rapidly and that they are accompanied by sufficient documentation.

Director's Authority to Settle Claims

6 Under Internal Regulation 8.4.1, the Director may make final settlement of any claim for compensation without the prior approval of the Executive Committee, if he estimates that the total cost to the IOPC Fund of satisfying all such claims arising out of the relevant incident is not likely to exceed 37.5 million (gold) francs (2.5 million SDR), which corresponds to approximately £2.3 million. The Director may in any case make final settlement of claims from individuals and small businesses up to an aggregate amount of 10 million (gold) francs (£600 000) in respect of each incident. As for the Director's authority to settle claims for indemnification of the shipowner, the limit is 25 million (gold) francs (£1.5 million) (Internal Regulation 9.5). The Executive Committee may authorise the Director to settle claims or pay indemnification beyond these limits in respect of a particular incident (Internal Regulations 8.4.2 and 9.6, respectively).

The Problem

7 The AEGEAN SEA incident occurred on 3 December 1992 and the BRAER incident on 5 February 1993. These incidents were thus not taken into account for the levy of contributions decided by the Assembly at its 15th session, held in October 1992. The 1993 annual contributions will be fixed by the Assembly at its 16th session, to be held in October 1993, and will probably be due on 1 February 1994.

8 Since no new contributions will be paid into the General Fund until early 1994, the Director would not consider it appropriate to use, already in early 1993, the entire assets of the General Fund for the payment of claims arising out of the AEGEAN SEA and the BRAER incidents. On the other hand, it is very important that these claims are paid rapidly.

9 It should be noted that payments will first be made by the shipowner's P & I insurer up to the limit of liability applicable to the respective shipowner (approximately £6.5 million in the case of the AEGEAN SEA and approximately £5.5 million in the case of the BRAER). In respect of the BRAER incident, payments can also be made from the Bridging Fund set up by the United Kingdom Government through the Scottish Office if the P & I insurer of the BRAER and the IOPC Fund do not dispose of sufficient liquid funds to ensure rapid payments (cf document FUND/EXC.34/5, paragraph 4). It is nevertheless likely that the IOPC Fund will very soon be called upon to make payments of significant sums of money in respect of these two incidents.

Possible Solutions

10 One possible solution would be for the IOPC Fund to raise money by taking bank loans. The Assembly has taken the position, however, that it would not be appropriate for the IOPC Fund to rely on the possibility of raising money by way of bank loans, at least not in normal circumstances (document FUND/A.14/23, paragraph 15.1). The Director does not recommend that bank loans should be used for financing the payment of compensation in respect of claims arising out of these two incidents.

11 The other possibility would be to take loans from the General Fund and from the HAVEN Major Claims Fund to finance the payment of claims arising out of these two incidents. Such loans would be repaid with interest from the AEGEAN SEA Major Claims Fund and the BRAER Major Claims Fund, as the case may be, once they have been established. As at 15 February 1993, the balances on the General Fund and the HAVEN Major Claims Fund were approximately as follows:

General Fund	£9 000 000
HAVEN Major Claims Fund	£23 500 000
	<u>£32 500 000</u>

12 In the view of the Director, it is unlikely that any significant payments of compensation will be made during 1993 in respect of the HAVEN incident. The Director proposes, therefore, that the necessary liquid funds to pay claims arising out of the AEGEAN SEA and the BRAER incidents should be made available as follows:

Loans from the General Fund	£3 000 000
Loans from the HAVEN Major Claims Fund	£15 000 000
	<u>£18 000 000</u>

13 The Executive Committee may wish to leave it to the Director to decide how the funds referred to in paragraph 12 should be distributed between the two incidents.

14 If the liquid funds referred to in paragraph 12 were to be insufficient to ensure rapid payments, the Director would refer the matter back to the Executive Committee for decision.

15 **Action to be Taken by the Executive Committee**

The Executive Committee is invited to take note of the information contained in the present document and give the Director such instructions as it deems appropriate concerning measures to be taken in order to ensure that sufficient liquid funds are available for the rapid payment of claims arising out of the AEGEAN SEA and the BRAER incidents.

